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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,800

02/23/2004

Fausto Pinna

249175US0

5473

22850

7590

07/17/2007

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.

1940 DUKE STREET

ALEXANDRIA, VA 22314

EXAMINER

LEWIS, KIANDRA CHARLE

ART UNIT

PAPER NUMBER

3772

NOTIFICATION DATE

DELIVERY MODE

07/17/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/782,800

Applicant(s)

PINNA ET AL.

Examiner

Kiandra C. Lewis

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed, after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21,22 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21,22 and 40-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3/1/2007 have been fully considered but they are not persuasive.
2. As to claim 21, Kundel substantially discloses all of the limitations of the claim but does not expressly state that one layer is supplied directly to at least one surface of the flexible porous support. Nielsen however teaches that it would have been known in the art at the time of the invention to apply a layer of hydrogel directly to a porous support without the need of an adhesive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., adhesive between substrate and hydrogel) not recited in the rejected claim(s). Applicant argues that Nielsen does not address the issue of an adhesive between a substrate and a hydrogel layer, but this is not a limitation required in claim 21. As the claim reads the at least one layer of gel must only be applied to at least one surface of a flexible support. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 21 and 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kundel US 5,480,717 in view of Nielsen WO 02/05737.

As to claim 21 and 41, Kundel discloses hydrogel laminate bandages and composites, thereby disclosing breathable pads (col. 6, line 14-17), for application to the human skin, to develop a decongestant, cosmetic and/or pharmaceutical action (col. 4, lines 35-40). The pad comprises a flexible porous support (col. 4, lines 62-66) having at least one layer of gel applied to a surface. The support can be woven or nonwoven fabrics (column 4, lines 62-67), which are to some extent flexible, porous and breathable. The gel comprises between 50% and 77% of water and between 6.5% and 44% of a dermatologically compatible polymer (polyvinyl alcohol, col. 4, lines 34-35 and 51-54). Kundel does not disclose that the layer of gel is applied directly to the porous support. Nielson teaches applying a hydrogel (2) directly to a support (1) with no adhesive between to obtain the highest permeability (page 5 line 22-page 6 line 2). It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the bandage disclosed by Kundel wherein the hydrogel is applied directly to the support, as taught by Nielsen et al, to provide the maximum permeability throughout the bandage.

As to claim 40, Kundel in view of Nielson disclose a method for treating skin for reducing localized swelling or providing decongestant, analgesic or antiedema effect, comprising externally applying the pad of claim 21 to the subject.

6. Claims 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kundel in view of Nielson further in view of Caskey (US Patent Application 2004/0127826).

As to claim 42-45, Kundel in view of Nielson teach the claimed invention as outlined in the rejection to claim 41 above. Kundel does not disclose that the breathable pad contain a substance of plant origin. Caskey teaches a breathable (woven or nonwoven) pad having at least one layer of gel (honey, 7 Figure 3) on at least one surface, wherein the gel comprises a substance of plant origin comprising essential oils and aromatic extracts ([0086] and [0103]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pad of Kundel in view of Mershon, having a substance of plant origin, as taught by Caskey, to provide additional therapeutic properties.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kundel and Nielsen as applied to claim 21 above, and further in view of Czech et al. US 5,336,501

As to claim 22, Kundel and Nielsen substantially disclose the limitations of the base claim but do not expressly state that the gel further comprises sodium alginate or calcium alginate. However it is known in the art that sodium or calcium alginate increase the absorption capabilities of bandages or dressings. Czech et al. disclose that sodium alginate is known in the medical field for surgical use and wound

management (col. 1, lines 26-28). Therefore it would have been obvious to one having ordinary skill in the art to include sodium alginate in the invention to increase its absorption capabilities (col. 2, lines 23-27).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5718916, 2002/0122771 A1.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiandra C. Lewis whose telephone number is 571-272-7517. The examiner can normally be reached on Mon-Thurs 9AM-6PM and alternating Fridays 9AM-5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCL

Patricia Bianco
PATRICIA BIANCO
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7/9/07